IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Bail Appl..No. 6516 of 2007()

CRIME NO.249/07 OF NADAKKAVU POLICE STATION

PETITIONER/ACCUSED

P.K.RAJAN, SECRETARY,
HERITAGE INDIA FOUNDATION,
KAITHAPRAM, PAYYANNUR.

BY ADV. SRI.GOVIND K.BHARATHAN
SRI.PRABIN BABU

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE DIRECTOR GENERAL OF POLICE,
TRIVANDRUM.

3. THE INSPECTOR GENERAL OF POLICE,
NORTHERN RANGE, KOZHIKODE.

4. THE SUPERINTENDENT OF POLICE,
KOZHIKODE.

5. THE SUB INSPECTOR OF POLICE,
NADAKKAVU POLICE STATION,
KOZHIKODE.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6516 OF 2007

Dated this the 11th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner is the sole accused arrayed so far in a crime registered for the offence punishable under Sec.420 read with Sec.34 of the IPC. He is the President of the American College of Management and Technology. The said College runs courses in `IELTS' and `CGFNS'. The allegation is that the petitioner, in collusion with certain others, had fraudulently induced some nurses to join the courses. Such nurses have been fraudulently induced to subscribe their signatures to various documents at the time when they were admitted to the courses. It now turns out that such documents are documents under which they are shown to have applied for loans. They were induced to believe that they can undergo the courses free of any charges and that they

need only pay the amounts after they are enabled to secure employment abroad. Some of the incumbents, including the complainant, did join the courses; but did not succeed in securing employment as promised. To their shock and dismay, they found that the demands were being made by the bank to them to repay amounts. It is alleged that they have availed education loans from such bank. The crux of the case of the allegedly deceived incumbents is that they were fraudulently deceived to believe that they can attend the courses free of any charges and that they are assumed employment and further that they need pay the amounts only after securing such employment. A complaint was made by one of the incumbents to the Commissioner of Police, Kozhikode. He got an enquiry to be conducted. Thereafter, an F.I.R. has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. Along with this it must be stated that against the petitioner another crime was registered in Ernakulam City and the petitioner was obliged to come before this Court seeking anticipatory bail. That application for anticipatory bail was

dismissed as per the order dated 10/10/07 in B.A.No.6196/07, when this Court was informed that this crime is now under investigation and the investigation in the other crime before the Ernakulam North Police Station is discontinued because of the investigation being conducted by the Nadakkavu Police Station, Kozhikode in this crime.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent and that the unsuccessful incumbents, who could not quality by passing the courses successfully, are making false, vexatious and fanciful allegations against the petitioner. The petitioner had no direct dealings with these incumbents. They were selected by some other agencies and were sent to the petitioner's establishment to undergo the courses. The petitioner had done all that was possible to impart necessary training/education to the incumbents accepting the prescribed fee. The fee was paid not by the candidates directly; but by the agency which sponsored these candidates. There was some arrangement between that agency, the bank and the incumbents under which they were permitted to continue the courses in the petitioner's

establishment and expenses/fees for the courses was paid by the bank through the agency to the petitioner. In any view of the matter, the petitioner has nothing to do with the incumbents regarding the bank transaction. It is pointed out that the incumbents along with the co-applicants had applied for loan and the agency which sponsored these incumbents had offered corporate guarantee to the bank for such loan transactions. Disappointed candidates, who could not acquire the required qualification in spite of the training imparted to them, are now crying hoarse to cover up their own faults and place the blame for their misfortune at the doors of the petitioner. The petitioner is willing to co-operate with the Investigator. Any appropriate conditions may be imposed; but the petitioner may be saved of the undeserved trauma of arrest and detention, submits the learned counsel for the petitioner.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the materials collected so far do certainly point to the complicity of the petitioner herein also. The learned Public Prosecutor brings to my notice the specific material collected which would indicate

that the petitioner was available even at the time when the initial selection of candidates took place. The learned Public Prosecutor further wants to rely on the circumstance that though much hype was build up for the institution, it is only a one room institution functioning in a hired premises of another institution. The learned Public Prosecutor further points out that tall claims were made to exaggerate the credentials of this institution and even they claimed falsely that some working arrangements with the Medical College at Pariyaram in this matter. There must unerringly point to the complicity of the petitioner and at any rate, the petitioner is not entitled to the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

5. I have considered all the relevant inputs. The Case Diary has been placed before me for my perusal by the learned Public Prosecutor after flagging the relevant pages. I have perused the same.

6. At this early stage of the investigation I shall not embark on any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it

to say that having considered all the relevant inputs, I find merit in the submission of the learned Public Prosecutor that the petitioner cannot, at the moment and on the basis of the available inputs, be mulcted with any culpable responsibility for the transaction of the incumbents/their co-applicants and the bank in question. The petitioner is not the one of the sureties. The arrangement is between the bank, sponsoring agency and the incumbents and the contention of the petitioner that the core of the allegation presently made - that the documents which were innocently signed by the incumbents/their co-applicants were made use of fraudulently to make it appear that they have availed loans, is uninspiring does appear to be impressive. I may hasten to observe that I do not intend to express any final opinion on merits. I do accept the contention that the anticipatory bail can now be granted to the petitioner subject, of course, to very strict conditions which shall ensure and safeguard the interests of a fair, efficient and expeditious investigation.

7. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 18/12/07. He shall be released on regular bail on his executing a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 5 p.m. on 19/12/07, 21/12/07 and 22/12/07. During this period the Investigator shall be at liberty to interrogate the petitioner in custody and take all necessary steps for the proper conduct of the investigation in this case. The petitioner shall thereafter make himself available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) The petitioner shall furnish to the Investigating Officer the address of his place of residence in Kerala and shall

not leave the State of Kerala for a period of two months without the specific prior permission of the learned Magistrate.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 18/12/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.1,00,000/- (Rupees one lakh only) without any sureties undertaking to appear before the learned Magistrate on 18/12/07.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge